Supreme Court, U. S.
FILED
OCT 10 1975
MICHAEL RODAK, JR., CLERK

No. 75-303

In the
Supreme Court of the United States
October Term, 1975

IN THE MATTER OF
SAMUEL V. BOSSOV,
Petitioner.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

John F. McCarthy
100 West Monroe Street
Chicago, Illinois 60603
312-263-1155

Heretofore appearing as amicus curiae in the Supreme Court of Illinois for the Board of Managers and the Committee on Grievances of The Chicago Bar Association, Sitting as Commissioners of the Supreme Court of Illinois, under Illinois Revised Statutes c. 110A § 751.

The Schaffer Press, Inc.—(312) 263-6850

INDEX

PAGE

Proceedings Below 1

Questions Presented 1

Statement Of The Case 2

Reasons For Refusing Writ 10

I. Bossov Was Not Denied Due Process 10

A. Bossov May Not Complain About Delays. These Did Not Result In Any Denial Of Due Process. They Were Induced By Him, In Many Instances, And Did Not Prejudice Him, In Any Event 11

B. The Illinois Supreme Court Did Not Relax The Customary Standard Of Proof And Did Not Place The Burden Of Proof On Bossov 14

II. The Sanction Imposed On Bossov Is Reasonable 16

Conclusion 17

Appendix A

Findings As Amended And Recommendation As Amended Of The Board Of Managers Of The Chicago Bar Association Sitting As Commissioners Of The Illinois Supreme Court 1a

Table Of Cases

In re Anderson, (1939) 370 Ill. 515, 520, 521, 19 N.E. 2d 330, 333 11

In re Ashbach, (1958) 13 Ill. 2d 411, 150 N.E. 2d 119 .. 17

Cool v. U. S., (1972) 409 U.S. 100 16

In re Damisch, (1967) 38 Ill. 2d 195, 206, 230 N.E. 2d 254, 260 14

PAGE

Florida Bar Association v. Randolph, (1970, Fla.) 238 So. 2d 635 ..... 11, 12

In re Isserman, (1953) 345 U.S. 286, 289 17

Mullaney v. Wilbur, (1975) 95 S.Ct. 1881 16

The People v. Hooper, (1905) 218 Ill. 313, 332, 75 N.E. 896, 899 11

In re McCallum, (1945) 391 Ill. 400, 64 N.E. 2d 310 .. 17

People v. Meyerovitz, (1917) 278 Ill. 356, 364, 116 N.E. 189 14

In re Ruffalo, (1968) 390 U.S. 544 16

In re Schwarz, (1972) 51 Ill. 2d 334, 338, 282 N.E. 2d 689, 691 14

In re Snitoff, (1972) 53 Ill. 2d 50, 289 N.E. 2d 428 .. 17

Tennessee Bar Association v. Berke, (1960, C.A. Tenn.) 344 S.W. 2d 567, 571, 572 11

United States v. Marion, (1971) 404 U.S. 307, 313 13

In re Winship, (1970) 397 U.S. 358 16

TEXTS

Annotation, 45 A.L.R. 1111 11

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-303

IN THE MATTER OF

SAMUEL V. BOSSOV,

Petitioner.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PROCEEDINGS BELOW

The majority and dissenting opinions of the Illinois Supreme Court are reported in 328 N.E. 2d 309. The two dissenting Judges concluded that Bossov should be suspended but for some lesser period of time. (Petn. App. p. 12)

The Findings, as amended, and the Recommendations, as amended, of the Board of Managers of The Chicago Bar Association, Sitting as Commissioners of the Illinois Supreme Court, are included herein as Appendix A.

QUESTIONS PRESENTED

1. Bossov was not denied due process. The delays of which he complains did not prejudice him and, in many instances, were induced by him. There can be no depriva-

tion of due process without prejudice to the person affected.

2. The Illinois Supreme Court maintained the standard of clear and convincing proof required in cases of this kind and found that that standard had been met. It did not place any burden of proof on Bossov, and did not violate any of his due process rights.

3. The sanction imposed on Bossov is reasonable.

4. Bossov, in his Statement of the Case, refers only to one Federal question as conferring on this Court jurisdiction to entertain his Petition for Certiorari. That is the claim of unreasonable delays. His Statement of the Case does not make reference to any other Federal question.

STATEMENT OF THE CASE

Bossov's statement of the facts of this matter is incomplete and, in some instances, inaccurate. We shall discuss the facts, as briefly as possible, under four sub-heads, viz., Solicitation, Failure to Account and Pay to Clients, Claim by Bossov of Delay, and Investigative Assistance of Employees of the American Insurance Association. However, we first shall consider certain matters that are common to all Counts and issues herein.

The Illinois Supreme Court approved the Report, Findings, as amended, and Recommendation, as amended, of the Board of Managers of The Chicago Bar Association, sitting as Commissioners of the Court. This resulted in the Judgment suspending Bossov from the practice of law for three years.

Finding 11 of the Board of Managers is of particular significance in this Court's consideration of this matter. That Finding is: (App. A, p. 8a)

"11. The Commissioners find that respondent (Bossov) was not candid and open in his testimony during the hearings of this cause."

The Illinois Supreme Court and the Board of Managers just did not believe Bossov.

Further, Bossov threw away records in the face of a pending investigation of his conduct,—a clear indication of the destruction of evidence. He knew that his affairs were being checked. (Dvsn. Rpt. 252)[1] He retained a lawyer,—Jerrold Morris. (Dvsn. Rpt. 270) He examined and "solidified" his files. (Dvsn. Rpt. 269, 270) He took statements from some of his former clients. (Dvsn. Rpt. 252) In 1964, he and his counsel met with Francis Schlax and Kent Yowell, attorneys and members of the Inquiry Committee of The Chicago Bar Association. (Dvsn. Rpt. 270) Yet, thereafter, despite all this, he destroyed some of his records. (Dvsn. Rpt. 252)

We now proceed to a consideration of the facts in the four areas referred to above.

Solicitation. The Illinois Supreme Court concluded: (Petn. App. pp. 3, 4)

> "We consider the evidence of solicitation satisfied the requirement that it be clear and convincing. The respondent's argument that there was no evidence that the respondent had employed anyone to solicit injury claims for him or that he had paid anyone to do so does not persuade. We consider that the evidence of solicitation, though mostly circumstantial, was convincing."

---

[1] In this Brief, "Dvsn. Rpt." refers to the Report of Division III of the Grievance Committee of The Chicago Bar Association, which heard the evidence in this matter. Its Report includes an Abstract of that evidence and the Exhibits.

The Board of Managers, sitting as Commissioners of the Court, found: (App. A, p. 7a)

> "9. The charges of solicitation and procurement in Counts IV, VII, VIII, IX and X and the evidence adduced in connection therewith show a pattern of comprehensive solicitation and procurement of personal injury claims by and on behalf of respondent. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute."

And the Board of Managers concluded: (App. A, p. 8a)

> "It is apparent from what has been set forth above that commencing in 1958 and thereafter the respondent, Samuel V. Bossov, solicited or caused to be solicited numerous personal injury claims. The evidence before this Committee demonstrates that divers persons solicited claims for respondent and that respondent could not explain how any of these claimants came to him, but that in each instance claimant was contacted and referred to respondent, he having represented none of said claimants prior to the time of the accident. * * *"

With reference to each of the Counts referred to above, the evidence showed that there had been an accident. Bossov was unable to tell how he got the cases which resulted. (Dvsn. Rpt. 144, 146, 180, 204, 240) The persons involved did not know Bossov and never had heard of him. (Dvsn. Rpt. 95, 151, 182, 209, 242) However, almost immediately someone talked to each person about his retaining Bossov and gave that person Bossov's card. (Dvsn. Rpt. 96, 103, 153, 182, 209, 243) In the *Franzen* case, that "someone" was Bossov himself. (Dvsn. Rpt. 151, 153). In the *Nehrke* case, he was Feldman, Bossov's friend and former law clerk and investigator. (Dvsn. Rpt. 181) The

Illinois Supreme Court and the Board of Managers found that Bossov had solicited personal injury claims. The coincidences and the pattern were too great for them to believe otherwise.

This case also illustrates the ultimate evils of solicitation. It involves fraudulent claims. For example, Bossov told Nehrke to go to Dr. Sternback and tell him he was injured when he was not. (Dvsn. Rpt. 181) He told Duffy, who was "all right," to go to Dr. Sternback and to stay off work because it would make the case look better. (Dvsn. Rpt. 210) It also involves failure to account for and pay over the amounts due clients on settlements. These matters are considered next.

Failure to Account and Pay to Clients. The Illinois Supreme Court concluded: (Petn. App. p. 7)

> "We judge that the failure of the respondent to account promptly and pay over moneys due clients was sufficiently demonstrated. Such a failure was obviously and grievously improper and of course constitutes serious misconduct."

The Board of Managers found: (App. A, p. 7a)

> "10. The charges of failure to properly account with clients on the proceeds of settlement of injury claims in Counts I, II, III, IV and VII show a pattern of how respondent settled personal injury claims on behalf of his clients without proper explanation or accounting of funds. None of the clients in the Counts listed in this paragraph received an accounting or written settlement statement. • • •"

And the Board of Managers concluded: (App. A, p. 8a)

> "• • • The evidence also clearly demonstrated that respondent failed to properly account to clients for settlement funds received in settlement of claims,

> with irregularities in accounting and failure to apprise clients as to the amount of the settlements.
>
> • • • • •
>
> "Furthermore, respondent in an attempt to cover up past acts of failure to account, made additional payments to clients many months after the original settlement and in one instance his agents induced a client to sign a false statement with respect to the additional payment, all with a purpose of covering up his having short changed them."

Bossov never gave the clients involved in Counts I, II, III and IV, referred to above, written accountings. (Dvsn. Rpt. 23, 36, 56, 73, 96) He owed Lancaster (Count I) $1,491.66. (Complt's. Ex. 13, 29; Dvsn. Rpt. 17, 22, 48) He paid him $485.00. (Dvsn. Rpt. 35, 39, 42) He owed Oshinski (Count II) $233.33. (Complt's. Ex. 46, 47; Dvsn. Rpt. 53, 54) He paid him $100.00. (Dvsn. Rpt. 55) He owed Aldridge (Count III) $633.33. (Complt's. Ex. 80; Dvsn. Rpt. 72) He paid him $300.00 and made small loans to him of approximately $20.00. (Dvsn. Rpt. 73, 75) He owed St. Charles (Count IV) $1,451.00. (Complt's. Ex. 101, 102, 104, 105; Dvsn. Rpt. 91-94) He paid her $900.00. (Dvsn. Rpt. 96, 101) Later, after the investigation of these matters commenced, Bossov made further payments: $600.00 to Lancaster, (Dvsn. Rpt. 35, 42) additional money, amount not recalled, to Oshinski, (Dvsn. Rpt. 60, 61) $500.00 to St. Charles. (Dvsn. Rpt. 97) These later payments are consistent with only one explanation, that Bossov short changed his clients in the first instance. The conclusion of the Illinois Supreme Court and the Board of Managers is inescapable,—Bossov didn't account and didn't pay.

In fact, this matter has many of the indicia of misconduct present in cases of this type. Bossov kept no books of account. He did not give his clients written accountings.

He frequently dealt with his clients in cash. He often made out checks to his clients in amounts larger than they received. (Lancaster, Complt's. Ex. 36, Dvsn. Rpt. 10, 11, 13; Aldridge, Complt's. Ex. 310, Dvsn. Rpt. 68, 69; St. Charles, Complt's. Ex. 314, Dvsn. Rpt. 87, 96, 101) He talked vaguely about payments "to get a case built up" (Dvsn. Rpt. 42) and payments to an adjuster. (Dvsn. Rpt. 97, 101) These facts, additionally, must have been persuasive to the Illinois Supreme Court and the Board of Managers.

Claim by Bossov of Delay. The Illinois Supreme Court concluded: (Petn.App. p. 9)

> "There is no prejudice to the respondent shown by the record here and there is no charge of specific prejudice made because of delays in the bringing of the proceeding or in the proceeding. As has been stated, the delays in substantial part were caused by the respondent's own action. There is no statute of limitations applicable in a disciplinary proceeding such as this, and we will not refuse to entertain charges simply because of the passage of some period of time. *In re Anderson,* 370 Ill. 515; *People ex rel. Healy* v. *Hooper,* 218 Ill. 313
>
> * * * * *
>
> "Considering all the circumstances, the argument of the respondent that the complaint should be dismissed and he should be discharged because of delays cannot be accepted."

The Board of Managers found: (App. A, p. 8a)

> "12. The Commissioners find that unreasonable delays in this cause occurred between January 29, 1965 and March 4, 1971, and hearings were continued on numerous occasions by reason of the engagement of respondent's counsel in matters of national importance."

After receipt by the Bar Association of the results of the investigation for the Association by investigators of the American Insurance Association, there followed a long period of consideration by the Committee on Inquiry of the Bar. Bossov knew of the investigation. (Dvsn. Rpt. 252) He had no false sense of security. He did what in his opinion best furthered his position. He was not prejudiced by this passage of time.

As we already have stated, during this period, Bossov retained a lawyer,—Jerrold Morris. (Dvsn. Rpt. 270) He and his counsel conferred with Francis Schlax and Kent Yowell, attorneys and members of the Committee on Inquiry. (Dvsn. Rpt. 270) He checked and "solidified" his files. (Dvsn. Rpt. 269, 270) He took statements from some of his clients. (Dvsn. Rpt. 252) He even threw away some of his records. (Dvsn. Rpt. 252, 267)

Further, many delays were induced by Bossov after the Complaint was filed. For example, he sought and was granted two extensions of time to file his answer. (Dvsn. Rpt. 1) He filed objections to a motion for a subpoena duces tecum. (Dvsn. Rpt. 2) He also filed a motion to strike Complainant's interrogatories, (Dvsn. Rpt. 2) later filed objections to the interrogatories (Dvsn. Rpt. 2) and subsequently received further time to answer the same. (Dvsn. Rpt. 3) He further filed a motion to strike Complainant's notice to produce (Dvsn. Rpt. 4) and a memorandum in opposition to Complainant's motion for production of his clients' statements. (Dvsn. Rpt. 4) More significantly, *37 continuances* of the hearings were granted on Respondent's motions. (Dvsn. Rpt. 2-7)

At the conclusion of the hearings, the Commissioners found themselves with a large record of 2264 pages and many exhibits. These were abstracted and carefully con-

sidered before the Report, Findings and Recommendation were issued.

Investigative Assistance of Employees of the American Insurance Association. The Illinois Supreme Court concluded, "We must reject the contention that activities of employees of the American Insurance Association require that the complaint must be dismissed." (Petn. App. p. 7)

Burns, an investigator for the American Insurance Association, testified that for two or three months during the summer of 1961, at the request of The Chicago Bar Association, he and other investigators checked the professional activities of Bossov and other attorneys. (R. 2174, 2175, Dvsn. Rpt. 298) He further said that in this regard he was acting as an agent of the Bar Association. (R. 2175, Dvsn. Rpt. 298) The results of this work were turned over to the Association. (Dvsn. Rpt. 302)

Burns met with representatives of the Bar before, during and after his investigation. (Dvsn. Rpt. 302) He received directions and instructions from them. (Dvsn. Rpt. 302) He never was consulted by the Bar regarding whether a complaint should be filed against Bossov. (Dvsn. Rpt. 303) The trial was conducted solely by members of plaint." (Dvsn. Rpt. 303) He did not participate in any way in the presentation of evidence, except as a witness. (Dvsn. Rpt. 303)

A long period of consideration by the Committee on Inquiry followed the receipt by the Bar of the results of that investigation. During that time Bossov and his counsel met with the attorneys and members of the Inquiry Committee. (Dvsn. Rpt. 270) The complaint that was filed was solely the work of the Committee. (Dvsn. Rpt. 303) The trial was conducted solely by members of

the Committee, principally Paul B. Youle and Richard W. Austin. The record does not support Bossov's charges in his Petition (pp. 3, 4) that the investigation of this matter and the preparation of the complaint were done by the Insurance Association rather than by the Bar. Nor does it support the charge that the investigators were controlled by the Insurance Association. Nothing improper is to be found in the action of the Insurance Association in assisting the Bar.

Bossov's Statement of the Case refers only to one Federal question which he claims gives this Court jurisdiction to entertain his Petition for Certiorari. That is the matter of the alleged unreasonable delays in the disciplinary proceedings as violative of his constitutional right to due process of law. (See Petn. for Cert. 5) Bossov's Statement of the Case does not make reference to any other Federal question.

REASONS FOR REFUSING WRIT

I.

BOSSOV WAS NOT DENIED DUE PROCESS.

Bossov was afforded every right guaranteed to him by the phrase, "due process". He received prompt notice of the proceedings and very well knew of the investigation that resulted in that action. The Complaint advised him of the charges of solicitation and failure to account and pay to clients. He was represented by able counsel, one of whom appears for him in this Court. The Illinois Supreme Court and the Board of Managers of The Chicago Bar Association, as well as its Committees, carefully considered this matter.

A. Bossov May Not Complain About Delays. These Did Not Result In Any Denial Of Due Process. They Were Induced By Him, In Many Instances, And Did Not Prejudice Him, In Any Event.

This is the only Federal question which Bossov contends, in his Statement of the Case, confers jurisdiction on this Court to entertain his Petition for Certiorari.

There is no statute of limitation in Illinois applicable to disciplinary proceedings against an attorney. *The People* v. *Hooper,* (1905) 218 Ill. 313, 332, 75 N.E. 896, 899; *In re Anderson,* (1939) 370 Ill. 515, 520, 521, 19 N.E. 2d 330, 333. This is the situation in most jurisdictions. See Annotation, 45 A.L.R. 1111. Generally, a plea of delay, laches or limitations will not bar action by a sovereign, such as the State of Illinois, through its Supreme Court, in regulating a lawyer's practice or disciplining him for misconduct. Delay, alone, is insufficient.

However, the Illinois Supreme Court has said that in discharging its disciplinary obligations, it will consider whether delay has resulted in any prejudice to the attorney. *The People* v. *Hooper,* (1905) 218 Ill. 313, 332, 75 N.E. 896, 899; *In re Anderson,* (1939) 370 Ill. 515, 520, 521, 19 N.E. 2d 330, 333. This likewise is the situation in most jurisdictions. See, as examples, *Tennessee Bar Association* v. *Berke,* (1960, C.A. Tenn.) 344 S.W. 2d 567, and *Florida Bar Association* v. *Randolph* (1970, Fla.) 238 So. 2d 635, both cited by Bossov.

In *Tennessee* v. *Berke,* 344 S.W. 2d 567, there was a nine year interval between the incident involved and the institution of disciplinary proceedings. During that time certain witnesses had died or become unavailable. The Court approved dismissal of the charges, observing that Berke had been prejudiced by the lapse of time. The Court said, 344 S.W. 2d 571, 572:

> "We think such long delay, unexplained as it is in this record, coupled with proof that witnesses have died or otherwise have become unavailable, constitutes laches (Gibson's Suits in Chancery, 5th Ed. § 81) and was a ground for dismissal of the petition. In 7 C.J.S. Attorney and Client, § 25b, it is stated 'Staleness in a charge against an attorney may prevent its being considered, because an unreasonable delay in the presentation of a charge of misconduct may make it impossible for an attorney to procure the witnesses or the testimony which would have been available at an earlier time to meet such charge.' That is the condition here * * *. Nor, does it appear the delay has been to his benefit but rather, strongly, to his detriment."

In *Florida* v. *Randolph*, 238 So. 2d 635, despite the language quoted by Bossov, the Court publicly reprimanded Randolph, suspended him from the practice of law for ninety days and assessed against him the costs of the proceeding.

Obviously, there can be no deprivation of due process without some prejudice to the person affected.

Bossov claims prejudice because of the interval of three years and five months between the completion of the investigation for the Bar Association by employees of the American Insurance Association and the filing of the Complaint by the Committee on Inquiry of the Association. No such prejudice exists. The Committee thoroughly considered the results of the investigation. Bossov knew that his affairs were being checked. We have detailed previously, and need not repeat here, his activities in attempting to cover up his misconduct.

Bossov also complains about the interval of two years and seven months between the close of the hearings before

Division III of the Grievance Committee of the Association, which heard the evidence, and the issuance of its Findings and Recommendation. Division III found itself with a large record of 2264 pages and many exhibits. These were abstracted and carefully considered. No prejudice to Bossov exists here.

Bossov is silent about his own very substantial contributions to the passage of time. After the filing of the Complaint, all of the delays were attributable to him. We have referred to these earlier, including the 37 continuances of the hearings granted on Bossov's motions. (Dvsn. Rpt. 2-7)

Bossov further complains of the loss of memories of those witnesses who appeared against him. It appears to us that if such loss existed, which we do not admit, it must have helped his case and certainly did not weaken his position. What he hoped to accomplish if the hearings had been held at an earlier time is a matter of pure speculation on his part.

Bossov's contentions do not require us to reach the matter of a speedy trial as guaranteed by the Sixth and Fourteenth Amendments. "* * * the speedy trial provision has no application until the putative defendant in some way becomes an 'accused', an event that occurred in this case when the appellees were indicted." *United States* v. *Marion,* (1971) 404 U.S. 307. We already have demonstrated that after the filing of the Complaint here, all delays were attributable to Bossov.

Likewise, the absence of any prejudice to Bossov and the lack of any deprivation of due process make unnecessary any detailed discussion of the nature of disciplinary matters. The Illinois Supreme Court long has held that such proceedings are for the protection of the courts and

the public and are not criminal prosecutions and subject to all the rules that govern such cases. *People* v. *Meyerovitz,* (1917) 278 Ill. 356, 364, 116 N.E. 189; *In re Damisch,* (1967) 38 Ill. 2d 195, 206, 230 N.E. 2d 254, 260; *In re Schwarz,* (1972) 51 Ill. 2d 334, 338, 282 N.E. 2d 689, 691; certiorari denied, 409 U.S. 1047, rehearing denied, 410 U.S. 917. *Schwarz* involved the grant of an immunity from criminal prosecution to an attorney and the effect of that grant under the Fifth and Fourteenth Amendments. The questions were briefed carefully for this Court in the Petition for Certiorari and the Brief in Opposition thereto. The Petition was denied by this Court.

B. The Illinois Supreme Court Did Not Relax The Customary Standard Of Proof And Did Not Place The Burden Of Proof On Bossov.

Bossov, in his Statement of the Case, failed to mention the matter of the burden of proof as a reason for this Court having jurisdiction of his Petition for Certiorari. Nevertheless, he has devoted Point II of his Brief to that subject.

Bossov contends that the Illinois Supreme Court placed on him the burden of proving the absence of payments to solicitors. This is not so. It is based on a misconception of the Court's opinion as a reading of that opinion shows.

The Court reviewed the evidence of solicitation. We have discussed much of it previously. The Court noted that while the evidence was mostly circumstantial, this was proper and sufficient proof. It concluded that the evidence satisfied the requirement that it be clear and convincing and sustained the charge of solicitation. The Court said: (Petn. App. 1, 3, 4)

"In a disciplinary proceeding the charges must be proved by clear and convincing evidence.

* * * * *

"We consider the evidence of solicitation satisfied the requirement that it be clear and convincing. The respondent's argument that there was no evidence that the respondent had employed anyone to solicit injury claims for him or that he had paid anyone to do so does not persuade. We consider that the evidence of solicitation, though mostly circumstantial, was convincing. What we said *In re Krasner,* 32 Ill. 2d 121, 127, under resembling circumstances, is applicable here:

> 'Anchoring his argument to the frequently expressed principle that charges in a disciplinary proceeding must be sustained by clear and convincing proof, (*e.g. In re Donaghy,* 402 Ill. 120, 124) respondent contends there is no proof that Vogele, Skidmore or any other person actually solicited any cases, or that respondent had any knowledge they were doing so, and as a consequence no evidence that business was ever solicited by respondent or by others in his behalf. His theory seems to be that without direct testimonial evidence of solicitation, either by Vogele or Skidmore or the persons solicited, the proof against him is neither clear nor convincing. We do not agree. Circumstantial evidence is legal evidence and neither the Commissioners nor this court are required to be naive or impractical in appraising an attorney's conduct.'"

Bossov relies on the Illinois Supreme Court's statement that his "argument that there was no evidence that the respondent had employed anyone to solicit injury claims for him or that he paid anyone to do so does not persuade." This is not a statement that Bossov has the burden of proving the absence of payments to solicitors.

It does not denote a shift in the burden of proof,—only disagreement with an argument and conclusion.

Bossov's authorities on this matter are not in point. They deal with situations where the burden and standard of proof were relaxed. *In re Winship,* (1970) 397 U.S. 358, was a proceeding involving a juvenile who was charged and convicted of stealing money. Pursuant to the applicable New York statute, the Trial Judge adopted the standard of "preponderance of the evidence" as to the proof rather than the standard of "beyond a reasonable doubt." This Court reversed, holding that the Trial Judge's adoption of the wrong standard violated one of the essentials of "due process." In *Mullaney* v. *Wilbur,* (1975) 95 S.Ct. 1881; and *Cool* v. *United States,* (1972) 409 U.S. 100, both criminal prosecutions, this Court regarded a Maine statute in the first case and the Trial Judge's instructions in the second as reducing the prosecution's burden of proof of "beyond a reasonable doubt." Obviously, *In re Ruffalo,* (1968) 390 U.S. 544, considered a different situation and likewise is not in point.

In any event, it is clear that in this matter the Illinois Supreme Court maintained the standard of clear and convincing proof required in cases of this kind and did not place the burden of proof on Bossov. It did not violate any of his "due process rights."

II.

THE SANCTION IMPOSED ON BOSSOV IS REASONABLE.

Bossov, in his Statement of the Case, likewise failed to mention "cruel and unusual punishment" as a reason for this Court's jurisdiction.

The Illinois Supreme Court, in suspending Bossov from the practice of law for three years, said, "The defendant's conduct as shown by the record here was completely reprehensible. The sanction recommended by the Board of Managers is certainly not excessive, and we adopt it." (Petn. App. p. 9) The two dissenting Judges concluded that Bossov should be suspended but for some lesser period of time. (Petn. App. p. 12)

The sanction imposed is not excessive or disproportionate. The Illinois Supreme Court has disbarred for solicitation, *In re McCallum*, (1945) 391 Ill. 400, 64 N.E. 2d 310; as well as for failure to account and pay to clients, *In re Snitoff*, (1972) 53 Ill. 2d 50, 289 N.E. 2d 428; *In re Ashbach*, (1958) 13 Ill. 2d 411, 150 N.E. 2d 19. This Court should not interfere with the sanction for Bossov.

CONCLUSION

This Court should deny Bossov's Petition for Certiorari. "There is no vested right in an individual to practice law. Rather there is a right in the Court to protect itself, and hence society, as an instrument of justice." *In re Isserman*, (1953) 345 U.S. 286, 289.

JOHN F. MCCARTHY
100 West Monroe Street
Chicago, Illinois 60603

Heretofore appearing as amicus curiae in the Supreme Court of Illinois for the Board of Managers and the Committee on Grievances of The Chicago Bar Association, sitting as Commissioners of the Supreme Court of Illinois, under Illinois Revised Statutes c. 110A §751.

APPENDIX A

BEFORE THE BOARD OF MANAGERS AND THE COMMITTEE ON GRIEVANCES OF THE CHICAGO BAR ASSOCIATION COMMISSIONERS OF THE SUPREME COURT OF ILLINOIS

In The Matter of)	
Samuel V. Bossov,)	Commissioners No. 1356
An Attorney.)	

FINDINGS AS AMENDED AND RECOMMENDATION AS AMENDED OF THE BOARD OF MANAGERS OF THE CHICAGO BAR ASSOCIATION SITTING AS COMMISSIONERS OF THE ILLINOIS SUPREME COURT

The Commissioners find that Samuel V. Bossov was licensed to practice in the State of Illinois in 1953 and has been a practicing attorney since that date; that in 1958 and subsequent years a considerable portion of his practice has been personal injury work; and that on or about January 29, 1965 a complaint was filed against Samuel V. Bossov, respondent, charging him with engaging in solicitation and procurement of personal injury claims. The complaint also charged respondent, Samuel V. Bossov, with failure to properly account for the proceeds of settlement of personal injury claims. His action was unprofessional and calculated to bring the good name of the legal profession into disrepute and demonstrated a lack of understanding of his duties, responsibilities and obligations as an attorney at law and constituted violations thereof. Some of the particulars of these practices are as follows:

1. The Complaint in Count I arose out of a three car accident which occurred on July 22, 1959, in which True Lancaster and Joe Robinson were involved. Respondent served a notice of attorney's lien for a 33⅓% fee on July 27, 1959. The Count alleges that Respondent solicited

and procured the claims and that upon settlement of the claims he failed to properly account for funds in his possession due and owing True Lancaster and Josephine Lancaster, his wife.

With respect to that part of Count I pertaining to solicitation and procurement of said claim, we find that the charge was not sustained by the evidence. However, the failure to properly account was sustained by the evidence.

This accident involved two settlements, one for $3,000.00 settled when a covenant not to sue in the amount of $3,000.00 was executed on December 15, 1959. On December 17, 1959, Respondent issued his own check for $950.00 payable to True Lancaster, the proceeds of which check Lancaster did not receive. Lancaster endorsed the check which then was, and remained, in Bossov's possession. Joe Robinson at some time was paid $300.00. On December 18, 1959, a check was issued for $3,000.00 by The Home Indemnity Company payable to True Lancaster and Joe Robinson, not endorsed by Lancaster but bearing his purported signature and Bossov's signature, and cashed on the same day. The other claim for $1,000.00 was settled for that sum on or about January 13, 1960. We find that Respondent failed to inform True Lancaster as to the amount of the first settlement and told him it was for $1,000.00, when in fact it was $3,000.00. On learning the settlement was for $3,000.00 instead of $1,000.00, Lancaster was dissatisfied. Thereafter, he and his boss, witness Edward Harney, went to Respondent's office and confronted him with the deficiency. Respondent gave Lancaster an additional $200.00 in cash in an effort to put the matter to rest. From the two settlements of $3,000.00 and $1,000.00, respectively, Lancaster received payments of $50.00, $35.00, $400.00, $400.00 and an additional $200.00, being the same $200.00 just referred to above, for a total of $1,085.00 and Joe Robinson $300.00, although the fee arrangement was one-third of the settlement. Such conduct is contrary to the canons of professional ethics of the

legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

2. The complaint charges in Count II in the case of Joseph Oshinski and Glo Oshinski, improperly pleaded and sometimes referred to as Gloria, that respondent failed to properly account for funds in his possession due and owing the Oshinskis, said funds being the proceeds of settlement of personal injury claims; also, that respondent failed to consult with his clients with reference to the settlement. We find both charges are supported by the evidence. Said claims arose from an automobile accident which occurred in Chicago, Illinois sometime on or about February 27, 1959. Respondent filed his attorney's lien for 33⅓% on March 20, 1959. The case was settled when on or about June 24, 1959, Allstate Insurance Company issued its check for $350 payable to Joseph Oshinski and Gloria Oshinski. Respondent mailed his own check for $100 dated July 6, 1959 to Oshinski. The Allstate Insurance Company check for $350 was cashed July 8, 1959. We find that the settlements were made without authority of the Oshinskis, and that neither Joseph or Glo Oshinski signed the release nor authorized the signing thereof by anyone else, although the signatures were purportedly witnessed by respondent, and that the charges in Count II of the complaint are amply sustained by the evidence. That about two years after the settlement, respondent paid additional money to Oshinski in bills, two days after investigators from the Bar Association had contacted him. The statement by respondent's representative was that "if there was going to be trouble they (respondent) wanted to clear it up or something like that." Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

3. The Complaint charges in Count III that on February 10, 1961, Ted Aldridge was involved in an automobile accident. That on April 20, 1961, Samuel V. Bossov

failed to consult with his client in making a settlement and failed to properly account for funds in his possession due and owing to Ted Aldridge. We find that Respondent failed to properly account for funds due and owing Ted Aldridge and that Respondent failed to consult with Ted Aldridge prior to making the settlement of the personal injury claim. The settlement in this case was $950.00. Ted Aldridge received $300.00 in cash and, in addition, small advances, not exceeding $20.00. No accounting of the settlement was made to Aldridge. Of a $587.00 check written by Respondent on April 21, 1961, payable to Ted Aldridge, said Aldridge did not receive the proceeds. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

4. The complaint in Count IV charges that on and after May 20, 1959 respondent engaged in a comprehensive scheme of solicitation and procurement of personal injury claims, and pursuant thereto the claims of Doris St. Charles and Deborah St. Charles, her minor daughter, were solicited and procured in Chicago, Illinois by respondent. Count IV also charges that respondent failed properly to account for funds in his possession and owing to Doris and Deborah St. Charles. We find that the evidence on this Count amply sustained the allegations as to solicitation and procurement and failure to properly account. The St. Charles had never heard of respondent prior to their being contacted between 5:30 and 6:30 on the afternoon of the automobile accident. The accident occurred on May 20, 1959 between 3:00 and 4:00 in the afternoon. Doris St. Charles was released from the hospital at about 5:00 or 5:30 o'clock in the afternoon and went home. That same evening at about 5:30 to 6:30 P.M. someone telephoned the St. Charles at home and later someone came to their house and indicated he was there for attorney Bossov. The settlements in this case amounted to $2,400 for Doris St. Charles and $300 for her minor daughter, Deborah; that neither Doris St. Charles nor

Douglas St. Charles, her husband, saw the amount of the insurance company settlement draft, nor did respondent advise them as to the amount; that Doris St. Charles received $900 in $100 bills from respondent; that the settlement was consummated on or about November 10, 1959. In February or March of 1963 respondent caused Doris St. Charles to be contacted and paid an additional $500 in $100 bills, and caused her to sign a false statement indicating the payment was made on September 14, 1961, prior to the time it was actually received by Mrs. St. Charles. The charges in Count IV of the complaint are amply substantiated by the evidence. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

5. The Complaint in the case of Richard Franzen, a minor, and his parents, Eric and Evelyn Franzen, Count VII, arose out of an accident where an automobile struck a motor scooter being operated by Richard Franzen on Ashland Avenue in the City of Chicago on July 12, 1959. The Complaint charges solicitation and procurement and settlement without the permission or approval of the clients. We find from the evidence that both charges are amply supported by the evidence. The claim was solicited by Respondent at the Illinois Masonic Hospital where Richard Franzen was taken after the accident. The evidence shows that Respondent approached Mrs. Franzen when she and her son were leaving the hospital and asked if he could represent the Franzens in their damage claim. She had never before heard of Respondent. The night of the accident Respondent and another man went to the home of the Franzens and asked to represent them in their accident claim. With respect to the settlement, Respondent caused Evelyn Franzen to endorse the settlement check of the insurance company without showing her the face amount and induced her to accept a settlement for $150.00, whereas the settlement was $275.00, without explaining the full financial implications and without advising her, orally or in writing, the manner in which

the amount of $150.00 was computed. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

6. The complaint in Count VIII, involving a man by the name of Donald Nehrke, was the result of an automobile accident which occurred on May 6, 1960 on LaSalle and Clark Streets in Chicago, Illinois. The charge against respondent is that he solicited and procured this claim by and through one John Doe, true name unknown. We find that the evidence supports the charge in the complaint. The evidence shows that the accident occurred at between 3:00 and 4:00 o'clock in the afternoon, and after the other motorist got a ticket the police officer suggested that Donald Nehrke could get a newer car if he employed respondent. Representatives from Bossov's office came to Nehrke's home the night of the accident, and Nehrke went to respondent's office the next morning. Nehrke told Bossov he was not injured in the accident, nor was his car damaged, but he did go to a doctor of respondent's choosing. Respondent does not remember how Donald Nehrke came to him, and the evidence clearly shows that he had not known or represented Nehrke prior to this time, nor had Nehrke ever heard of respondent. Nehrke ultimately abandoned his claim, and there was no settlement or payment. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

7. The complaint in Count IX in the case of James Duffy charges respondent with soliciting and procuring a personal injury claim resulting from an automobile accident which occurred on May 5, 1959 on Elston Avenue in Chicago, Illinois. The evidence shows that on the evening of the day of the accident some unknown person contacted James Duffy and asked if he had a lawyer and recommended respondent and gave Duffy respondent's card. Duffy had never before heard of respondent. We find that the charges in the complaint were sustained by

the evidence. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

8. The complaint in the case of Raymond Frey, Count X, arose out of an automobile accident which occurred on May 8, 1959 on Avers Street near Belmont Avenue in the City of Chicago and charged respondent with soliciting and procuring said claim. The evidence shows that a man who said he was a deputy sheriff came to Frey's home on the Sunday after the accident on the preceding Friday, and recommended respondent as an attorney and gave the witness Bossov's card. Frey had never before heard of respondent. Respondent undertook the representation of Raymond Frey and carried the matter through to settlement. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

9. The charges of solicitation and procurement in Counts IV, VII, VIII, IX and X and the evidence adduced in connection therewith show a pattern of comprehensive solicitation and procurement of personal injury claims by and on behalf of respondent. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

10. The charges of failure to properly account with clients on the proceeds of settlement of injury claims in Counts I, II, III, IV and VII show a pattern of how respondent settled personal injury claims on behalf of his clients without proper explanation or accounting of funds. None of the clients in the Counts listed in this paragraph received an accounting or written settlement statement. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

11. The Commissioners find that respondent was not candid and open in his testimony during the hearings of this cause.

12. The Commissioners find that unreasonable delays in this cause occurred between January 29, 1965 and March 4, 1971, and hearings were continued on numerous occasions by reason of the engagement of respondent's counsel in matters of national importance.

CONCLUSION

It is apparent from what has been set forth above that commencing in 1958 and thereafter the respondent, Samuel V. Bossov, solicited or caused to be solicited numerous personal injury claims. The evidence before this Committee demonstrates that divers persons solicited claims for respondent and that respondent could not explain how any of these claimants came to him, but that in each instance claimant was contacted and referred to respondent, he having represented none of said claimants prior to the time of the accident. The evidence also clearly demonstrated that respondent failed to properly account to clients for settlement funds received in settlement of claims, with irregularities in accounting and failure to apprise clients as to the amount of the settlements.

Furthermore, respondent in an attempt to cover up past acts of failure to account, made additional payments to clients many months after the original settlement, and in one instance his agents induced a client to sign a false statement with respect to the additional payment, all with a purpose of covering up his having short changed them.

It is the opinion of the Commissioners that the solicitation and procuring of the aforesaid personal injury claims and the failure to properly account to his clients with respect to settlement, as well as causing clients' names to be signed to releases and settling without prior consent of his clients, are unprofessional in character and demonstrate a lack of understanding on the part of respondent of the duties, responsibilities and obligations

of an attorney at law. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

RECOMMENDATION

The Recommendation of the Full Committee that the Respondent, Samuel V. Bossov, be suspended from the practice of law for the period of five years by the Supreme Court of Illinois be and it hereby is Amended to a Recommendation that the Respondent be suspended from the practice of law by the Supreme Court of Illinois for the period of three years.

The Report, Findings as Amended, and Recommendation as Amended, be filed with the Supreme Court of Illinois on December 21, 1973.

Copies of this Order be sent to all Counsel of Record.
Chicago, Illinois

/s/ James W. Kissel
JAMES W. KISSEL, President
of The Chicago Bar Association
and Commissioner of the Supreme
Court of Illinois

Copies of this Order sent to all Counsel of Record.

/s/ John F. McBride
JOHN F. MCBRIDE, Executive Director
Committee on Grievances

Counsel for Complainant
Richard Austin, Esq.
One First National Plaza
50th Floor
Chicago, Illinois

Paul Youle, Esq.
64 Del Mar Drive
Springfield, Illinois 62703

Counsel for Respondent
Albert E. Jenner, Esq.
135 South LaSalle Street
Suite 3300
Chicago, Illinois

Holland C. Capper, Esq.
110 North Wacker Drive
Chicago, Illinois